



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 34818623

Date: NOV. 26, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a photographer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not satisfy at least three of the initial evidentiary criteria. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established his receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined the Petitioner did not fulfill any of the nine claimed categories of evidence. On appeal, the Petitioner maintains his qualification for four criteria. Issues and prior eligibility claims not raised on appeal are waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

In addition, the Petitioner submits new evidence and argues new eligibility claims on appeal. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence and make these claims, we will not consider them for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because “the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial”). Thus, we will only address the evidence and claims brought before the Director and contested on appeal. For the reasons discussed below, the Petitioner did not establish he meets at least three categories of evidence.

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii).

USCIS determines if the association for which the person claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field.¹ The petitioner must show that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts.²

¹ *See generally* 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policymanual>.

² *Id.*

On appeal, the Petitioner maintains his eligibility for this criterion based on his membership with the Professional Photographers of America (PPA) and the Brazilian Association of Visual Authors Rights (AUTIS). The record reflects the Petitioner submitted evidence of his membership with PPA and AUTIS. However, the Petitioner did not demonstrate that membership with PPA or AUTIS requires outstanding achievements of its members, as judged by recognized national or international experts in the field. This criterion not only requires the Petitioner to establish his membership but also show that membership in the association requires outstanding achievements and recognized national or international experts judge such membership. Here, the Petitioner did not offer evidence before the Director to establish that he fulfills all elements of this criterion.

Accordingly, the Petitioner did not show he satisfies this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

USCIS first determines whether the published material was related to the person and the person's specific work in the field for which classification is sought.³ USCIS then determines whether the publication qualifies as a professional publication, major trade publication, or other major media publication.⁴

Initially, the Petitioner submitted foreign language articles without any English language translations. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). Translators must certify that the English language translation is complete and accurate, and that they are competent to translate from the foreign language into English. *Id.* In addition, the Petitioner presented an English language article where he is credited as the photographer in the accompanying caption but does not discuss the Petitioner and his work.⁵ *See also, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). Furthermore, the Petitioner did not provide evidence showing the articles were published or posted in professional or major trade publications or other major media.⁶

In response to the Director's request for evidence (RFE), the Petitioner submitted two screenshots posted on YouTube claiming to be an interview with him on the program, [REDACTED] on Sistema Brasileiro de Televisao. However, the Petitioner did not provide a transcript of the purported

³ *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

⁴ *Id.*

⁵ Similarly, it appears that his foreign language articles credit him as the photographer in the accompanying captions without any discussion of him.

⁶ *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1) (in evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended business audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media)).

interview demonstrating published material about the Petitioner relating to his work.⁷ Moreover, the Petitioner did not present evidence establishing that the television program qualifies as a professional or major trade publication or other major median.

For these reasons, the Petitioner did not establish he fulfills this criterion.

III. CONCLUSION

The Petitioner did not show he satisfies two categories of evidence, discussed above. Although the Petitioner also argues eligibility for the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi), we need not reach these additional grounds because the Petitioner cannot fulfill the initial evidentiary requirement of three under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.⁸

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of “extraordinary ability,”); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is “extremely restrictive by design,”); *Hamal v. Dep’t of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff’d*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are “reserved for a very small percentage of prospective immigrants”). *See also Hamal v. Dep’t of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that “[c]ourts have found that even highly accomplished individuals fail to win this designation”)); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that “arguably one of the most famous baseball players in Korean history” did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in his field.

⁷ *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (indicating an example of qualifying media may include transcripts of professional or major audio or video coverage of the person and the person’s work).

⁸ *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where applicants do not otherwise meet their burden of proof).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.